Plaintiffs, Vs. BRIEFING BRIEFING Ws. EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and Ne		Case 1:02-cv-05200-LJO-SAB Document 577 Filed 12/02/11 Page 1 of 2
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA FLAGSHIP WEST, LLC, et al., Plaintiffs, Vs. EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Re Trust, Inc. filed a notice of appeal from the final judgment entered in this action on September 2011. On the same date, Defendants filed an ex parte motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond. During pendency of the ex parte motion, Plaintiffs Flagship West, LLC, Marvin G. R and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter. reserved their right to move for any fees connected with enforcing their judgment, post-judgmentions and any appeal taken in this matter. On October 28, 2011, the Court ordered Plaintiffs not to execute the judgment.	2	
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA FLAGSHIP WEST, LLC, et al., Plaintiffs, Vs. EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and New	4	
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EASTERN DISTRICT OF CALIFORNIA FLAGSHIP WEST, LLC, et al., 1:02ev05200 LJO DLB CREQUESTING ADDITIONAL BRIEFING Plaintiffs, vs. EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty. Trust, Inc. filed a notice of appeal from the final judgment entered in this action on September 2011. On the same date, Defendants filed an exparte motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond. During pendency of the exparte motion, Plaintiffs Flagship West, LLC, Marvin G. Realty Partners, L.P. and New Plan Excel	6	
FLAGSHIP WEST, LLC, et al., Plaintiffs, STAGE REQUESTING ADDITIONAL BRIEFING ORDER REQUESTING ADDITIONAL BRIEFING Tust, Inc. filed a notice of appeal from the final judgment entered in this action on September 2011. On the same date, Defendants filed an ex parte motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond. During pendency of the ex parte motion, Plaintiffs Flagship West, LLC, Marvin G. R and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter. Trust, Inc. filed a notice of appeal from the final judgment entered in this action on September 2011. On the same date, Defendants filed an ex parte motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond. During pendency of the ex parte motion, Plaintiffs Flagship West, LLC, Marvin G. R and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter. Trust, Inc. filed a notice of appeal from the final judgment entered in this action on September 2011. On the same date, Defendants filed an ex parte motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond. During pendency of the ex parte motion, Plaintiffs Flagship West, LLC, Marvin G. R and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter. On October 28, 2011, the Court ordered Plaintiffs not to execute the judgment.		
FLAGSHIP WEST, LLC, et al., 1:02cv05200 LJO DLB ORDER REQUESTING ADDITIONAL BRIEFING Plaintiffs, Vs. EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty		EASTERN DISTRICT OF CALIFORNIA
ORDER REQUESTING ADDITIONAL BRIEFING OR October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and New	10	FLAGSHIP WEST, LLC, et al.,) 1:02cv05200 LJO DLB
EXCEL REALTY PARTNERS, L.P., et al., Defendants. On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and New Par	12	<u>)</u>
On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and New Partners, L.P. and New Partners, L.P. and New Partn		EXCEL REALTY PARTNERS, L.P., et al.,
On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Partners, L.P. and New Partners, L.P. and New Plan Excel Realty Partners, L.P. and New Plan Excel Realty Partners,	16	Defendants.
28	18 19 20 21 22 23 24 25 26 27	During pendency of the <i>ex parte</i> motion, Plaintiffs Flagship West, LLC, Marvin G. Reiche and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter, but reserved their right to move for any fees connected with enforcing their judgment, post-judgment motions and any appeal taken in this matter. On October 28, 2011, the Court ordered Plaintiffs not to execute the judgment.

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On November 3, 2011, Plaintiffs filed a cross-appeal from the Court's final judgment.

Thereafter, on November 4, 2011, the Court approved the supersedeas bond posted by Defendants.

Given the procedural posture of this case, including the supersedeas bond, the stay of enforcement and the pending cross-appeals, the Court requests that the parties address the propriety of ruling on the claim for fees at this time, including whether or not the parties seek a ruling at this time, deferral of a ruling or denial of the motion without prejudice until the appeals have been resolved. *See, e.g.*, Advisory Committee notes to Fed. R. Civ. P. 54(d) (If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved). The parties shall file a joint statement addressing this issue on or before December 7, 2011.

IT IS SO ORDERED.

Dated: December 1, 2011 /s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE